MT LEGISLATIVE HISTORY

Chapter 365 19 82

Bill H _____ (S) 252 Original bill & hist. ___C

H. Committee on Human Services + Aging

Hearing Date(s) MAR 16 ✓ C
MAR 17 ✓ C
_____ ___C
_____ ___C

Date Out MAR 17 ✓ C

S. Committee on Judiciary

Hearing Date(s) FEB 11 ✓ C
FEB 18 ✓ C
_____ ___C
_____ ___C

Date Out FEB 18 ✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 252

INTRODUCED BY REGAN, HIMSL, MILES, GRADY, PISTORIA, MANNING

IN THE SENATE

JANUARY 29, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY.
FEBRUARY 2, 1987	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1987	PRINTING REPORT.
FEBRUARY 21, 1987	SECOND READING, DO PASS.
FEBRUARY 23, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
MARCH 17, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 20, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 27, 1987	SECOND READING, CONCURRED IN.
MARCH 28, 1987	THIRD READING, CONCURRED IN. AYES, 89; NOES, 3.
	RETURNED TO SENATE.

IN THE SENATE

MARCH 30, 1987 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

Senate BILL NO. 252

INTRODUCED BY [signature] Himel Miles Grady Pistorea Richard Manning

A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING A DISABILITY INSURANCE POLICY OR A HOSPITAL OR MEDICAL SERVICE PLAN CONTRACT TO CONTAIN A PROVISION PROVIDING FOR CERTAIN SUBROGATION RIGHTS; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Subrogation rights. A disability insurance policy subject to this chapter may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the insurer is entitled to full subrogation against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

Section 2. Subrogation rights. A hospital or medical service plan contract issued by a health service corporation may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the health service corporation is entitled to full subrogation against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury

necessitating benefit payments.

Section 3. Codification instructions. (1) Section 1 is intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to section 1.

(2) Section 2 is intended to be codified as an integral part of Title 33, chapter 30, and the provisions of Title 33, chapter 30, apply to section 2.

Section 4. Applicability. This act applies to policies or contracts delivered, issued for delivery, or renewed in this state after October 1, 1987.

-End-

INTRODUCED BILL
SB 252

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.
SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0229 MAZUREK, JOSEPH P.	1/27	2/10	PROHIBIT COURT-ORDERED PLACEMENT IN COMMUNITY-BASED SERVICES	PASS AS AMENDED		2/16
SB0241 KEATING, THOMAS F.	1/28	2/06	REVISE LAW RELATING TO FORFEITURE AND SALE OF ITEMS RELATING TO DRUG OFFENSE	PASS AS AMENDED		2/20
SB0249 BLAYLOCK, CHET	1/29	2/10	REMOVE TERMINATION OF GOVERNMENTAL TORT LIABILITY LIMITS	PASS AS AMENDED		2/12
SB0252 REGAN, PAT	2/02	2/11	PERMIT DISABILITY INSURANCE POLICIES TO CONTAIN A SUBROGATION CLAUSE	PASS AS AMENDED		2/18
SB0256 JACOBSON, JUDY H.	1/30	2/09	CLARIFY SRS RESPONSIBILITY IN CUSTODY INVESTIGATIONS	PASS AS AMENDED		2/9
SB0258 BROWN, ROBERT J.	1/30	2/09	REVISE LAWS RELATING TO TRAINING OF JUSTICES OF THE PEACE	PASS AS AMENDED		2/9
SB0261 BROWN, ROBERT J.	2/02	2/13	INCREASE PENALTY FOR DRUG SALE TO MINOR NEAR A SCHOOL	PASS AS AMENDED		2/16
SB0269 KOLSTAD, ALLEN C.	2/02	2/13	GENERALLY REVISE LAW ON CORONERS	TABLED	Tabled on 2/16	—
SB0275 JERGESON, GREG	2/03	2/13	CONSIDER PARENTAL RESOURCES FOR MINORS APPOINTED COUNSEL IN HOMICIDE CASE	DO PASS		2/16
SB0289 VAN VALKENBURG, FRED	2/05	2/16	AUTHORIZE PRESIGNED EXTRADITION WAIVERS	PASS AS AMENDED		2/16
SB0303 HALLIGAN, MIKE	2/06	2/11	REVISE PROCEDURES FOR CHILD ABUSE PROSECUTION	PASS AS AMENDED		2/16

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 11, 1987

The twenty-sixth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 11, 1987 by Chairman Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present with the exception of Senator Crippen who was absent.

CONSIDERATION OF SENATE BILL 252: Senator Pat Regan, Billings, introduced SB 252, which arose out of a recommendation of the Governor's Health Care Cost Containment Advisory Council and permits health service corporations and disability insurers to use subrogation provisions in their contracts.

PROPONENTS: Steve Brown, representing Blue Cross-Blue Shield, supported the bill.

Rod Sundsted, Chief of Labor Relations and Employee Benefits Bureau, supported SB 252. (Exhibit 1)

Dennis Taylor, Governor's Health Care Cost Containment Advisory Council, supported the bill.

OPPONENTS: John Hoyt, representing himself, opposed the bill because it makes the patients pay for the health cost and also pay for litigation costs. He felt the bill only benefited the insurance companies and not the victims of health care costs.

Karl Englund, Montana Trial Lawyers Association, gave examples of what the bill would do to certain cases.

Tom Keegan, Attorney at law in Helena, believes the system works fine now.

DISCUSSION ON SENATE BILL 252: Senator Mazurek asked exactly what the insurance companies wanted out of this.

Mr. Charles Butler, insurance salesman, said the interest in the bill is to give the health insurers the ability to recover, which will help in the cost of insurance premiums.

Karl Englund gave the committee amendments for SB 252. (Exhibit 2)

Senator Regan closed by saying the bill will prevent "double dipping" into insurance policies.

CONSIDERATION OF SENATE BILL 303: Senator Mike Halligan of Missoula, introduced SB 303, which revises the procedures to be followed in prosecuting child abuse, neglect, and dependency cases. (Exhibit 3)

PROPONENTS: Carol Clemens, Child Abuse Center, Helena, agreed with the bill and the changes it will make. She felt the addition of psychological care to the definition of "harm to a child's health or welfare" was important. She explained to the committee that many times it is impossible to hear a petition within 20 days because of cases like one in which a mother flew to Germany, leaving her boyfriend at home with the kids, who put the kids on a bus for Helena, Montana, without their knowing anyone in Helena. She said a case like that takes more than 20 days to file, hear and most importantly, get the people who are responsible contacted.

John Madsen, SRS, supported the bill.

Rita Pickering, representing herself, testified in support of the bill.

Mary Peterson, representing herself, supported the bill.

OPPONENTS: There were no opponents.

DISCUSSION ON SENATE BILL 303: Senator Pinsoneault asked how one makes some of these parents understand these children might need psychological help.

Senator Halligan said not the state, or anyone, can force beliefs on people, but when there is abusive situations, this bill gives us the right to force a few ideas into people's heads for their own good.

Senator Mazurek inquired why psychological care had to be included because he felt "health" treatment would already cover the psychological care.

DATE Feb. 11th.

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check Support
Steve Brown	Blue Cross-Blue Shield	SB252	X
John Hoyt	Self		
Mary Peterson	Self	SB 303	X
Rod Sundsted	State Pers. Div	SB252	X
John Madsen	SRS	SB303	X
Dennis M. Taylor	Gov Health Care Cost Containment Advisory Council	SB252	X
Nat Pickering	Self	SB303	X
Laurie Flanagan	State Personnel	252	Y

(Please leave prepared statement with Secretary)

ROLL CALL

Judiciary COMMITTEE

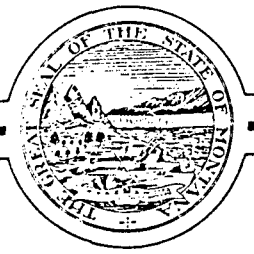
50th LEGISLATIVE SESSION -- 1987 Date Feb. 11th

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman			X
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blavlock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE Feb. 11th
BILL NO. SB 252

DEPARTMENT OF ADMINISTRATION
STATE PERSONNEL DIVISION



TED SCHWINDEN, GOVERNOR

ROOM 130, MITCHELL BUILDIN

STATE OF MONTANA

(406) 444-3871

HELENA, MONTANA 596

TESTIMONY OF ROD SUNDSTED, CHIEF OF THE
LABOR RELATIONS AND EMPLOYEE BENEFITS BUREAU,
IN SUPPORT OF SENATE BILL 252

Mr. Chairman, Members of the Committee, my name is Rod Sundsted, and I am Chief of the State's Labor Relations and Employee Benefits Bureau. I appear before you today in support of Senate Bill 252.

I would like to first point out that Senate Bill 252, as drafted, would allow Disability Insurance Plans subject to Title 33, Chapter 22, and Health Service Corporation Plans, subject to Title 33, Chapter 30, to include a subrogation provision. Because the State's Self-Insured Plan is exempt from Title 33, the State Plan would not be allowed to subrogate. I would like to offer an amendment for your consideration which would also allow the State Self-Insured Plan the option of including a subrogation provision.

I support Senate Bill 252 because it would allow benefit plans an additional option in their attempt to provide the greatest benefit for the dollars available.

Leg-2/ROD

PROPOSED AMENDMENTS TO SENATE BILL NO. 252:

1. Page 2, line 4.
Following: "chapter 22," in both places
Insert: "and Title 2, chapter 18,"

7040b/CNCL87

PROPOSED AMENDMENTS OF SB 252 -- INTRODUCED COPY — MTLA

SENATE JUDICIARY
EXHIBIT NO. 2
DATE Feb. 11, 198
BILL NO. SB 252

Page 1, line 14
Following: "entitled to"
Strike: "full"

Page 1, line 14
Following: "subrogation"
Insert: ", as provided for in [Section 3],"

Page 1, line 23
Following: "to"
Strike: "full"

Page 1, line 23
Following: "subrogation"
Insert: ",as provided for in [Section 3],"

Page 2, line 2
Insert: "Section 3. (1) If the insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the thrid party action, including attorneys' fees.

(3) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by [Sections 1 and 2].

(4) The insurer's right of subrogation granted in [Sections 1 and 2] does not apply until the injured insured has been fully compensated for his injuries.

Renumber subsequent sections.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 18, 1987

The thirty-first meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 18, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION ON SB 139: Senator Ed Smith of Senate District #10 introduced SB 139 to the committee (see Exhibit 1). He explained the bill had been heard in the Fish and Game Committee, but felt the bill needed to be looked at by the Judiciary Committee, because it dealt with a liability issue. He handed out the minutes of that meeting in Fish and Game Committee (see Exhibit 2).

PROPONENTS: John Maynard, Tort Claims Division, supported the bill and was quoted in the January 29th meeting of the Fish and Game Committee.

John Wilson, representing himself, supported the bill also.

Ken Hoovestal, chairman of the legislative committee for the Montana Snowmobile Association, supported the bill (see Exhibit 3). He asked the committee to read the January 29th minutes to see who testified in support of the bill.

Jim Flynn, Department of Fish, Wildlife, and Parks, testified in support of the bill (see Exhibit 4).

Stew Doggett, Montana Chamber of Commerce, favored the bill.

Bob Bushnell, Montana Snowmobile Association, supported SB 139 (see Exhibit 5).

Dennis Ogl, Montana Snowmobile Association, testified in support of the bill (see January 29th minutes of the Fish and Game Committee).

Bob Didrikson, Lincoln, Montana, said it is terribly difficult to get insurance for such a group and he supported the bill.

Jim Gillispie, Lincoln, Montana, supported the bill also.

OPPONENTS: Karl Englund, Montana Trial Lawyers Association, opposed the bill. He explained a case called Leslie vs Erickson, which involved a

reck on a snowmobile (January 19, 1984). Mr. Erickson was, because of the accident, completely brain dead. The case went to court with a jury and the liability was tried first and the damages were tried second. He explained that Mr. Erickson hit an obstacle on a snowmobile trail and there was no warning sign that this obstacle was there. Mr. Englund explained that is why Mr. Erickson was suing because there should have been a warning. Mr. Englund felt something should be done to section four of the bill because the assumption on the risk part, as it is written, will not help the snowmobile people at all.

DISCUSSION ON SB 139: Bob Lane, attorney for the Fish and Game Department, said the bill, in section 4, could be corrected by just revising the first sentense in the section on assumption of the risk. Senator Pinsoneault asked how a judge would say a person was assuming a risk by just driving a vehicle of some sorts. Karl Englund said if a person is participating in snowmobiling, then he has taken the risk of being hurt. The committee decided that Valencia would look at Karl Englund's purposals and problems with the bill dealing with assumption on the risk and willful and wanton misconduct.

Senator Smith closed on SB 139.

ACTION ON SB 252: Valencia and Karl Englund handed out amendments for the bill to the committee (see Exhibit 6 and 7). Mr. Englund explained a situation dealing with an injured person and subrogation process, which Valencia's amendments and his amendments would create. Senator Blaylock moved the amendments presented by Valencia. The motion CARRIED. Senator Halligan moved the bill DO PASS AS AMENDED. The motion CARRIED.

COMMITTEE BILL ON PRODUCTS LIABILITY (LC 1797): Senator Halligan presented the draft to the committee (see Exhibit 8). The committee wanted Valencia Lane to look over the first draft and report back to the committee.

ACTION ON SB 311: Senator Blaylock asked if one had an initiative that wiped out freedom of speech, would the local community have to wait have the election to get this silly initiative into the courtroom. Senator Crippen said that kind of thing would never get passed by a community, so why worry about taking action against an initiative that was killed at the ballot. Senator Beck felt there will not be that many initiatives that would cause that much problem. Senator Beck moved to TABLE the bill. The motion carried with Senator Halligan voting no.

ACTION ON SB 226: The SRS handed out an amendment for the bill (see Exhibit 9). Valencia explained this amendment will put back a definition that was taken out before. Senator Blaylock moved the amendment. The motion CARRIED. The Board of Crime Control presented amendments (see Exhibit 10). Valencia said the amendments will give the Board some time to react to the bill. Senator Halligan moved the amendments. The motion

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Feb. 1

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		X
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 6
DATE Feb. 18, 19
BILL NO. SB 252
Valencia

PROPOSED AMENDMENTS TO SB 252, FIRST READING COPY (WHITE)

1. Page 1, line 14.
Following: "entitled to"
Strike: "full"
Following: "subrogation"
Insert: ", as provided for in [section 3],"

2. Page 1, line 23.
Following: "to"
Strike: "full"
Following: "subrogation"
Insert: ", as provided for in [section 3],"

3. Page 2, line 2.
Following: line 1
Insert: "Section 3. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorneys fees.

(3) An insurer may elect not to participate in the cost of the action. If such an election is made, the insurer waives 50% of any subrogation rights granted to it by [section 1].

(4) The insurer's right of subrogation granted in [section 1] may not be enforced until the injured insured has been fully compensated for his injuries.

Section 4. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of his intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If such an election is made, the health service corporation waives 50% of any subrogation rights granted to it by [section 2].

(4) The health service corporation's right of subrogation granted in [section 2] may not be enforced until the injured insured has been fully compensated for his injuries."
Renumber: subsequent sections

4. Page 2, line 2.
Following: "(1)"
Strike: "Section 1 is"
Insert: Sections 1 and 3 are"

5. Page 2, line 4.
Following: "chapter 22," in two places
Insert: "and Title 2, chapter 18,"

6. Page 2, line 5.
Following: "to"
Strike: "section 1"
Insert: "sections 1 and 3"

7. Page 2, line 6.
Following: "(2)"
Strike: "Section 2 is"
Insert: "Sections 2 and 4 are"

8. Page 2, line 8.
Following: "to"
Strike: "section 2"
Insert: "sections 2 and 4"

C:\LANE\WP\AMDSB252.

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 2-18-87
BILL NO. S.B. 252

EXHIBIT NO. 7
DATE Feb. 18, 1
BILL NO. SB 252
Karl Ern

PROPOSED AMENDMENTS OF SB 252 -- INTRODUCED COPY

Page 1, line 14
Following: "entitled to"
Strike: "full"

Page 1, line 14
Following: "subrogation"
Insert: ", as provided for in [Section 3],"

Page 1, line 23
Following: "to"
Strike: "full"

Page 1, line 23
Following: "subrogation"
Insert: ",as provided for in [Section 3],"

Page 2, line 2
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(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the thrid party action, including attorneys' fees.

(3) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by [Sections 1 and 2].

(4) The insurer's right of subrogation granted in [Sections 1 and 2] does not apply until the injured insured has been fully compensated for his injuries.

Renumber subsequent sections.

STANDING COMMITTEE REPORT

February 18 '87

..... 19.....

MR. PRESIDENT

We, your committee on Senate Judiciary

having had under consideration SENATE BILL No. 252

first reading copy (white color)

Permit disability insurance policies to contain a subrogation clause.

Respectfully report as follows: That SENATE BILL No. 252

BE ~~AEK~~ AMENDED AS FOLLOWS:

1. Page 1, line 14.
Following: "entitled to"
Strike: "full"
Following: "subrogation"
Insert: ", as provided for in [section 3],"

2. Page 1, line 23.
Following: "to"
Strike: "full"
Following: "subrogation"
Insert: ", as provided for in [section 4],"

3. Page 2.
Following: line 1
Insert: "Section 3. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

~~AND AS AMENDED~~
~~DO PASS~~

~~DO NOT PASS~~

CONTINUED

SENATOR Mazurek Chairman.

February 18 19 87

(3) An insurer may elect not to participate in the cost of the action. If such an election is made, the insurer waives 50% of any subrogation rights granted to it by [section 1].

(4) The insurer's right of subrogation granted in [section 1] may not be enforced until the injured insured has been fully compensated for his injuries.

Section 4. Notice -- shared costs of third-party action -- limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the health service corporation reasonable notice of his intention to institute the action.

(2) The insured may request that the health service corporation pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) A health service corporation may elect not to participate in the cost of the action. If such an election is made, the health service corporation waives 50% of any subrogation rights granted to it by [section 2].

(4) The health service corporation's right of subrogation granted in [section 2] may not be enforced until the injured insured has been fully compensated for his injuries."
Renumber: subsequent sections

4. Page 2, line 2.
Following: "(1)"
Strike: "Section 1 is"
Insert: "Sections 1 and 3 are"

5. Page 2, line 4.
Following: "chapter 22," in two places
Insert: "and Title 2, chapter 18,"

6. Page 2, line 5.
Following: "to"
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7. Page 2, line 6.
Following: "(2)"
Strike: "Section 2 is"
Insert: "Sections 2 and 4 are"

8. Page 2, line 8.
Following: "to"
Strike: "section 2"
Insert: "sections 2 and 4"
70491/L:JEA\WP:jj

AND AS AMENDED DO PASS

STATUS SHEET

50th LEGISLATIVE SESSION

HUMAN SERVICES COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
6	2/4/87	3/3/87								3/5/87	
17	2/18/87	3/3/87						3/5/87			
18	2/18/87	3/3/87								3/5/87	
31	2/4/87	2/17/87						2/17/87			
105	2/11/87	3/5/87						3/5/87			
111	2/11/87	3/19/87						3/21/87			
120	2/18/87	3/12/87						3/5/87			
170	2/18/87	3/12/87								3/24/87	
176	2/11/87	3/5/87								3/12/87	
185	2/18/87	3/12/87						3/12/87			
246	2/24/87	3/10/87								3/24/87	
252	2/24/87	3/10/87						3/17/87			
305	2/24/87	3/1/87						3/12/87			
353	3/3/87	3/17/87	3/12/87	Rereferred							

e a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

The meeting of the Human Services and Aging Committee was called to order by Chairman R. Budd Gould at 12:30 p.m. on Tuesday, March 10, 1987 in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Strizich who was excused.

CONSIDERATION OF SENATE BILL 246:

Senator Williams, discussed SB185 and the Ombudsman position. He said this bill would establish an office for the service and specify an ombudsman's powers.

PROPONENTS:

CHARLES BRIGGS, state aging coordinator in the Office of the Governor, supported SB185. He stated this addressed the issue. He pointed out a federal requirement that the states provide assurance of access for the ombudsman. He said the ombudsman program is a key component in the federal Older Americans Act that must be in place in order to receive funds under the act. These funds provide for senior citizens services, nutrition, transportation, in-home care and other services. (Exhibit 1)

DOUG BLAKELY, state long-term care ombudsman in Helena, distributed an overview of SB185 (Exhibit 2). He said placement and access were the two main components. He pointed out that access is necessary in order to assist with information and problems. He said the bill does not expand the program in any way and only deals with access to facilities and not records. Access through other rules and laws through Health and SRS is not available through their licensing laws.

ELMER HAUSKIN, representing the American Association of Retired Persons, supported SB185.

HANK HUDSON, legal services developer in the Seniors' Office, discussed the responsibilities of the services. He mentioned that placement was currently attached to the Department of Rehabilitative Services and the state unit on aging to enhance the independence of the ombudsman and to meet some requirements in the federal legislation. He said that SB185 will allow the continuation of this arrangement. (Exhibit 3)

CONSIDERATION OF SENATE BILL 252:

SEN. PAT REGAN, Senate District 47, presented the bill that resulted from the Health Care Cost Containment Council Study. She mentioned one problem of "double dipping" so far as insurance was concerned. She explained this bill would help contain cost since insurance companies have to pay twice, premiums go up. She referred to Page 2, Section 3 and 4, that the insured should notify the insurance company of his intention to sue. The insurance company may elect to hold a portion of the cost of bringing this third party action. If the insurance company does so they are entitled to the subrogation right. If they choose not to do so then they cannot collect any more than 50 percent. The insurer right of subrogation may not be enforced until the person that has been insured has been fully compensated for his injuries. She said the bill is tort reform.

PROPONENTS:

STEVE BROWN, representing Blue-Cross Blue-Shield, supported SB252.

CARL ENGLUND, Trial Lawyers Association, testified in support of SB252. He explained that the bill had come into the Senate Judiciary Committee to allow the health insurer or the disability insurer the right to subrogation or the right to collect any amount that the injured person subsequently recovers from the third party that caused the accident. The amendments clarify that the insurer only gets the money that was paid out or a portion of it once the victim has been fully paid for his injuries. The amendments also adopt the rule that if the state fund, private carrier, or self insurer under work comp wants to participate in the third party action and pays some of the expenses then they have a full right to subrogation. If the injured person pursues the case on their own then the subrogation rights are diminished by the insurer because they are not taking any risk. The amendments clarify, by setting in statute, that a health insurer or disability insurer has the right of subrogation against amount recovered from a third party. He stated that this is actually a piece of tort reform legislation because it deals with collateral source rule. He pointed out that this bill may not reduce rates but have a downward impact on health insurance rates.

ROD SUNDSTED, chief of the state's labor relations employee benefits bureau in the Department of Administration, testified in support of SB252. He said the bureau administers the state employee and retiring elected official health plan.

OPPONENTS:

HARRY NEELY, representing the Montana Medical Association and attorney from Billings, opposes SB252. He stated that SB252 is not tort reform. Instead the MMA endorses and supports legislation passed by the House in HB567. HB567 deals with the question of duplicate payments. Often an injured person receives benefits under disability or other policy and also when there has been an error of omission, can sue a physician for malpractice. They then can claim the duplicate damage in that suit against that physician and recover a second time for the amount of damages that they have already recovered from their disability policy. He pointed out that this problem of duplicate payments constitutes an amount that is equivalent to 8% of the total premium costs attributable to casualty insurance in the tort system. Under HB567, the insured doesn't get the duplicate payment but do get credit for the premiums paid. SB252 also attempts to pay for the duplicate payment problem but the difference is it pays the money back to the disability carrier. HB567 pays the casualty carriers. What is the insured bargain for that has the disability insurance policy? The insured has made a bargain with the disability carrier and has said you the insurance company I hereby give you a premium if I fit within the terms of your policy you are going to give me some money, so the insured believes that the insurance company, the disability carrier is going to pay the benefits. The insurance does not bargain for the insurance company, the disability carrier to get its money back, to take its premium and also not have to make a payment on the claim. Under HB567, the insured gets the bargain for which they are entitled, they get what they paid for which is payment by that carrier. He pointed out that this causes the duplicate payment to be absorbed by the casualty carrier. This keeps the cost of casualty insurance up or continues to make it unavailable. Disability carriers have a larger base of insurance and is a more efficient form of insurance. A larger proportion of its dollar goes to the injured party. Casualty insurance is inefficient. He pointed out that about half of the cost goes to pay defense and plaintiff counsel and about 25 percent of the premium dollar goes to the injured parties. Duplicate payments has a more serious effect on the casualty area but if this cost is put on the disability carriers they are able to absorb it. Premiums would not be higher for the disability insured's because the disability carriers do not have the subrogation right. HB567 exempts from the deduction of duplicate payments anyone that has a subrogation right built into law. He explained that SB252 would build that into law and when a carrier was exerting its full 100 percent subrogation rights would exempt it from HB567. He urged the committee on behalf of the medical association to stick with

the policy decision made in passing HB567 and not adopt a contrary antithetical policy decision as proposed in SB252.

SEN. REGAN closed and suggested that this be explored further by the attorneys. She said the question is if you buy insurance whether your insurance company should get the benefit or should the person who injured you.

QUESTIONS FROM THE COMMITTEE:

REP. CORNE' asked Karl Englund to comment about Mr. Neely's testimony.

Karl Englund replied that a double payment would drive up the cost of the insurance. People who are prudent enough to buy their own health insurance and to pay premiums for that should have the benefit, not the people, the insurance carrier, or the individuals who caused the harm.

REP. CORNE' asked whether this bill was antithetical to HB567.

CARL ENGLUND replied that they work together. He said that this bill says if there is a double payment in terms of the health insurer or the disability insurer, they get that back. The other bill says that if there is going to be any sort of double payment that is not covered by this bill or not covered by work comp or not covered by other types of insurance then it is the casualty insurer that gets the credit for that. HB567 which deals with a reduction in the amount of the judgement that someone gets because they've already been paid.

CONSIDERATION OF SENATE BILL 246:

SEN. ESTHER BENGSTON, Senate District 49 Yellowstone County, discussed SB246 as a certificate of need bill. She said this revised and extends a certificate of need for the state of Montana until 1989. She said the thresholds for new equipment, new construction, and new services are adjusted. Batching requirements are put forth for review. There are new definitions in the bill and some fees charged for those making applications. She said there were 32 proponents and one opponent in the Senate hearing and included amendments proposed by the hospital association.

PROPONENTS:

SEN. TOM KEATING, citizen from Billings and on the board of directors for the Rimrock Foundation, spoke in support of SB246. He said the foundation is an alcohol and chemical dependency treatment center and has been involved in going

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 10, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. BUDD GOULD, CHAIRMAN	X		
REP. BOB GILBERT, VICE CHAIRMAN	X		
REP. JAN BROWN	X		
REP DUANE COMPTON	X		
REP. DOROTHY CODY	X		
REP. DICK CORNE'	X		
REP. LARRY GRINDE	X		
REP. STELLA JEAN HANSEN	X		
REP. LES KITSELMAN	X		
REP. LLOYD MC CORMICK	X		
REP. RICHARD NELSON	X		
REP. JOHN PATTERSON	X		
REP. ANGELA RUSSELL	X		
REP. JACK SANDS	X		
REP. BRUCE SIMON	X		
REP. CAROLYN SQUIRES	X		
REP. TONIA STRATFORD	X		
REP. BILL STRIZICH			X

CS-30

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

The meeting of the Human Services and Aging Committee was called to order by Chairman Budd Gould at 1:00 p.m. on March 17, 1987 in room 312 of the state capitol.

ROLL CALL: Rep Simon was absent, all other members were present.

HOUSE JOINT RESOLUTION NO 43

REP CAL WINSLOW, Billings, introduced HJR 43, which he stated was a recommendation from the governor's Cost Care Advisory Council which requests an interim study of the feasibility of requesting insurers to offer long-term care insurance. He said a very unfortunate situation exists in this country in that when it is time for someone to enter a nursing home, the incentive is for them to transfer their assets to their children and have the state pay for their nursing home care or, if "they play it straight", in a short period of time the cost of their care depletes their assets and the state then takes over the expense. Rep Winslow noted some companies are looking at the feasibility of offering long term care insurance, while in the next twenty (20) years Montana will see a 50% increase in the state's elderly population. At the same time, medicaid, which typically pays this expense, has gone from $30 million to $330 million in the last ten (10) years. Rep Winslow requested five (5) amendments to the resolution (exhibit 1). He concluded by stating there was a need for a cooperative effort by the public and private sector in addressing this issue.

PROPONENTS

ROSE SKOOG, director Montana Health Care Association, spoke in support of HJR 43. She stated most of the individuals in long term care facilities covered by medicaid funding are people, who, with the proper education and incentives, would have purchased some type of insurance, annuity, or done something to protect themselves against that health risk. Ms Skoog asked for consideration of an amendment on page 2 of the resolution: new subsection (6) incentives that the state could offer individuals and families to purchase long term care insurance (Number five (5), exhibit 1). She explained that in other states where long term care insurance is offered, one of the main incentives for this insurance is the provision of tax breaks or other incentives to

individual taxpayers to encourage them to purchase this insurance and provide for themselves. She felt this was an area that should be included in the study.

ELMER HAUSKEN, American Association of Retired Persons (AARP), read his prepared text (exhibit 2) in support of the resolution to help all the people in Montana.

BILL LEARY, Montana Hospital Association, expressed the association's support of HJR 43. He stated there was no guarantee that any congressional legislation would come out with any better benefits for the elderly other than the utilization of the services of nursing homes. He stated Montana needed to study the development of health care that would be a direct benefit to the elderly, and in particular, those who would require skilled nursing or intermediate nursing facility care.

JOE UPSHAW, Helena , AARP, expounded on his prepared testimony (exhibit 3) in support of the resolution.

CHUCK BUTLER, officer, Blue Cross-Blue Shield of Montana, expressed their support of the resolution. Mr Butler stated his organization is currently exploring the long term care insurance issue, and would welcome the opportunity of working with the interim committee on this important issue. He added Blue Cross-Blue Shield is the federal intermediary for the federal government's Health Care Financing Administration's medicaid program.

There were no opponents to the resolution.

REP WINSLOW then closed the testimony on HJR 43 as asked for support for passage of the resolution with amendments.

HOUSE JOINT RESOLUTION 43 - EXECUTIVE ACTION:

REP HANSEN made a motion to accept the five (5) amendments to House Joint Resolution 43.

A voice vote was taken and the motion PASSED unanimously.

REP HANSEN made a motion that House Joint Resolution 43 DO PASS as amended.

A voice vote was taken and the motion PASSED unanimously.

SENATE BILL 252 - EXECUTIVE ACTION:

REP CODY made a motion to reconsider action on SB 252.

A voice vote was taken and the motion PASSED unanimously.

STEVE WALDRON stated SB 252 represented a compromise that was acceptable between Blue Cross-Blue Shield and the trail lawyers. He stated the concept of the legislation was that if someone runs into you with their car and you are injured, and your medical insurance coverage pays your medical bills, this legislation would allow the health insurance provider to come back against the person who caused the injuries and his insurance company to collect reimbursement for those medical expenses that were paid for in the event that the plaintiff has been made whole.

KARL ENGLUND, Trial Lawyers Association, reiterated that the health insurance provider has the right to come back and collect against any amount of money if the claimant has been double paid. He stated that seems to be the big problem that people worried about. He said this bill insures that the health insurer is the one who gets the money if the claimant is truly double paid.

REP CODY made a motion that SB 252 BE CONCURRED IN.

A voice vote was taken and the motion PASSED unanimously.

REP MILES will carry the bill.

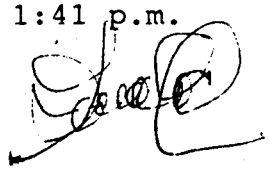
SENATE BILL 170 - EXECUTIVE ACTION:

REP CODY suggested that the bill be sent to a subcommittee for consideration of the proposed amendments.

REP NELSON read letters he had received from constituents which contained strong testimony against SB 170.

CHAIRMAN GOULD then appointed Rep Sands, Rep Compton, and Rep Cody to a subcommittee to consider SB 170 and the proposed amendments. He stated he had a copy of the Arkansas law that sets up an oversight committee made up of two members of the medical board, two members of the optometric board, and one member of the board of pharmacy. He stated they would only deal with any complaints arising out of SB 170. He said he supported this provision as an amendment to this legislation.

The meeting was adjourned at 1:41 p.m.



Budd Gould, Chairman

bg/gmc/hs3.17

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date [illegible]

NAME	PRESENT	ABSENT	EXCUSED
REP. BUDD GOULD, CHAIRMAN	✓		
REP. BOB GILBERT, VICE CHAIRMAN	✓		
REP. JAN BROWN	✓	✓	
REP DUANE COMPTON	✓		
REP. DOROTHY CODY	✓		
REP. DICK CORNE'	✓		
REP. LARRY GRINDE	✓	✓	
REP. STELLA JEAN HANSEN	✓		
REP. LES KITSELMAN	✓	✓	
REP. LLOYD MC CORMICK	✓		
REP. RICHARD NELSON	✓		
REP. JOHN PATTERSON	✓	✓	
REP. ANGELA RUSSELL	✓		
REP. JACK SANDS	✓		
REP. BRUCE SIMON		✓	
REP. CAROLYN SQUIRES	✓		
REP. TONIA STRATFORD	✓		
REP. BILL STRIZICH	✓	✓	

STANDING COMMITTEE REPORT

MARCH 17, 19 87

Mr. Speaker: We, the committee on HUMAN SERVICES AND AGING

report SENATE BILL NO. 252

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. R. BUDD GOULD, Chairman

PERMIT DISABILITY INSURANCE POLICIES TO CONTAIN A SUBROGATION CLAUSE

REP. MILES WILL CARRY THIS BILL IN THE HOUSE OF REPRESENTATIVES

THIRD reading copy (BLUE color)

SB 0252/02

SENATE BILL NO. 252

INTRODUCED BY REGAN, HIMSL, MILES, GRADY, PISTORIA, MANNING

A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING A DISABILITY INSURANCE POLICY OR A HOSPITAL OR MEDICAL SERVICE PLAN CONTRACT TO CONTAIN A PROVISION PROVIDING FOR CERTAIN SUBROGATION RIGHTS; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Subrogation rights. A disability insurance policy subject to this chapter may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the insurer is entitled to ~~full~~ subrogation, AS PROVIDED FOR IN [SECTION 3], against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

Section 2. Subrogation rights. A hospital or medical service plan contract issued by a health service corporation may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the health service corporation is entitled to ~~full~~ subrogation, AS PROVIDED FOR IN [SECTION 4], against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

SECTION 3. NOTICE -- SHARED COSTS OF THIRD-PARTY ACTION -- LIMITATION. (1) IF AN INSURED INTENDS TO INSTITUTE AN ACTION FOR DAMAGES AGAINST A THIRD PARTY, THE INSURED SHALL GIVE THE INSURER REASONABLE NOTICE OF HIS INTENTION TO INSTITUTE THE ACTION.

(2) THE INSURED MAY REQUEST THAT THE INSURER PAY A PROPORTIONATE SHARE OF THE REASONABLE COSTS OF THE THIRD-PARTY ACTION, INCLUDING ATTORNEY FEES.

(3) AN INSURER MAY ELECT NOT TO PARTICIPATE IN THE COST OF THE ACTION. IF SUCH AN ELECTION IS MADE, THE INSURER WAIVES 50% OF ANY SUBROGATION RIGHTS GRANTED TO IT BY [SECTION 1].

(4) THE INSURER'S RIGHT OF SUBROGATION GRANTED IN [SECTION 1] MAY NOT BE ENFORCED UNTIL THE INJURED INSURED HAS BEEN FULLY COMPENSATED FOR HIS INJURIES.

SECTION 4. NOTICE -- SHARED COSTS OF THIRD-PARTY ACTION -- LIMITATION. (1) IF AN INSURED INTENDS TO INSTITUTE AN ACTION FOR DAMAGES AGAINST A THIRD PARTY, THE INSURED SHALL GIVE THE HEALTH SERVICE CORPORATION REASONABLE NOTICE OF HIS INTENTION TO INSTITUTE THE ACTION.

(2) THE INSURED MAY REQUEST THAT THE HEALTH SERVICE CORPORATION PAY A PROPORTIONATE SHARE OF THE REASONABLE COSTS OF THE THIRD-PARTY ACTION, INCLUDING ATTORNEY FEES.

1 (3) A HEALTH SERVICE CORPORATION MAY ELECT NOT TO
2 PARTICIPATE IN THE COST OF THE ACTION. IF SUCH AN ELECTION
3 IS MADE, THE HEALTH SERVICE CORPORATION WAIVES 50% OF ANY
4 SUBROGATION RIGHTS GRANTED TO IT BY [SECTION 2].
5 (4) THE HEALTH SERVICE CORPORATION'S RIGHT OF
6 SUBROGATION GRANTED IN [SECTION 2] MAY NOT BE ENFORCED UNTIL
7 THE INJURED INSURED HAS BEEN FULLY COMPENSATED FOR HIS
8 INJURIES.
9 Section 5. Codification instructions. (1) ~~Section 1 is~~
10 SECTIONS 1 AND 3 ARE intended to be codified as an integral
11 part of Title 33, chapter 22, AND TITLE 2, CHAPTER 18, and
12 the provisions of Title 33, chapter 22, AND TITLE 2, CHAPTER
13 18, apply to ~~section 1~~ SECTIONS 1 AND 3.
14 (2) ~~Section 2 is~~ SECTIONS 2 AND 4 ARE intended to be
15 codified as an integral part of Title 33, chapter 30, and
16 the provisions of Title 33, chapter 30, apply to ~~section 2~~
17 SECTIONS 2 AND 4.
18 Section 6. Applicability. This act applies to policies
19 or contracts delivered, issued for delivery, or renewed in
20 this state after October 1, 1987.

-End-